

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**BRIDGESTONE-FIRESTONE  
NORTH AMERICAN TIRE, LLC<sup>1</sup>**

Employer

**and**

**Case 3-RC-11428**

**AMALAGAMATED TRANSIT UNION, LOCAL 282**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“Board”).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Bridgestone-Firestone North American Tire, LLC, (“Employer”) is a corporation licensed in Delaware that leases retail tires and provides related services. It engages in this activity at a facility in Rochester, New York, in accordance with a service agreement with the Rochester Regional Transit Service, Inc. (“RTA”). The parties stipulated that, in the course and conduct of its business, the Employer annually derives gross revenues in excess of \$500,000 and

purchases and receives at its Rochester, New York facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated, and I find, that Amalgamated Transit Union Local 282 ("Petitioner") is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election in a bargaining unit comprised of the Employer's bus and tire service persons and work leaders employed at the Rochester Genesee Regional Transit Authority garage at 1372 East Main Street, Rochester, New York, excluding all guards and supervisors as defined in the Act.<sup>2</sup> The parties stipulate that the bus and tire service persons constitute an appropriate unit. There is currently one such employee, Melvin Greathouse. The parties disagree as to the inclusion of the team leader, Timothy Turner; the Employer seeks to exclude this classification from the unit on the basis that it is a supervisory position within the meaning of Section 2(11) of the Act. Turner's supervisory status is the only issue presented herein.

### **FACTS**

The Employer has a five-year contract with the RTA to supply bus tires and service.<sup>3</sup> The Employer's Mileage Sales Division, which leases tires to various bus, truck and commercial fleets, oversees this contract. The general manager of the Mileage Sales Division is Dennis

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner amended its petition at the hearing. It is apparent from the record that work leader is synonymous with team leader and both refer for the position being held by Timothy Turner.

<sup>3</sup> The contract expires in September 2004.

in Akron and reports to Mariola. Jim Hardin, field manager, is located in Buffalo, New York, and is responsible for the Division's Northeast territory. Hardin directly supervises team leader Turner and service person Greathouse, both of whom work at RTA's garage in Rochester, New York.

Both Turner and Greathouse perform the same duties, but on different shifts. Turner works from 11:00 p.m. to 7:30 a.m. and Greathouse works from 6:00 a.m. to 3:30 p.m. Hardin testified that the work they perform is routine and basically is unchanged from day to day. Primarily, they inspect the buses' tires and determine if they need to be serviced. If they do, then, with the approval of RTA's foreman, the tires are serviced and a "swing sheet" is prepared. The swing sheet details the services that Turner and Greathouse must complete. A monthly report, called a mileage fleet inspection report, is also prepared which describes the services performed assembling data for the report requires that the tires on the buses to be visually inspected to discern sidewall damage and wear conditions and to determine their condition for road hazards. The report is compiled from data supplied by both Turner and Greathouse, but Turner is primarily responsible for preparing the report.

Turner and Greathouse also perform other clerical functions in servicing the tires. Both provide information needed to compile a monthly inventory report. The report consists of data obtained from packing slips from tire orders, information regarding tires that are removed from service, and data obtained from a physical count of tires in the facility and on the vehicles.<sup>4</sup> While both Turner and Greathouse create the report, the form summarizing the report is completed by Turner. The duties performed by Turner and Greathouse do not change and Turner does not assign any work to Greathouse.

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<sup>4</sup> RTA employees provide information regarding tires on the buses, which is necessary for the report.

Turner and Greathouse share other common terms and conditions of employment. Both are hourly employees, who punch the same timeclock. If their work hours deviate from the standard forty hours, each employee is required to report this deviation to Hardin. Turner is paid \$12.60 per hour and Greathouse is paid \$11.58 per hour.<sup>5</sup>

Hardin is in contact with Turner by phone, generally every other day. He also evaluates both employees annually. This evaluation is reviewed by the divisional manager and given to the regional manager for final approval.<sup>6</sup> Based on their evaluations, Turner and Greathouse may receive merit based raises.<sup>7</sup> Hardin is responsible for approving both employees' vacation requests. Hardin also approves any requests by the employees for taking a personal day off. If either Turner or Greathouse needs time off, each must inform the other and Hardin. Greathouse must also inform Turner or Hardin if he needs to leave work during his shift. Turner lacks authority to change Greathouse's hours or to assign him overtime work.

Both Turner and Greathouse have independently interviewed job candidates and have made recommendations concerning whether the candidate should be hired. The last person hired, Christopher O'Conner, who resigned in March 2004, was hired by Harden despite Turner's recommendation against it.<sup>8</sup>

Hardin testified that Turner has the authority to terminate an employee after consulting with him. Turner has never recommended that any employee be fired. The last employee terminated was Colucci, a tire technician, and Hardin terminated him without seeking Turner's

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<sup>5</sup> The contract between the Employer and RTA specifies that the tire technician earns at least \$11.00 an hour. Prior to working directly for the Employer, both Turner and Greathouse worked on a contract basis for the Employer at the RTA facility. At that time, they worked for Executive Personnel Services, a temporary employment agency. Turner became a direct employee of the Employer in April 2000 and Greathouse became an employee in July 2003.

<sup>6</sup> In creating the annual performance evaluations, both Turner and Greathouse may voice their opinions about each other to Hardin, but Hardin determines the content of the evaluations.

<sup>7</sup> Turner does not have the authority to grant Greathouse a pay increase.

<sup>8</sup> The Employer and RTA agreed to an amendment of their contract which authorized a third employee to work under the contract from January 1, 2004 to March 31, 2004.

recommendation. Field Manager Hardin testified regarding issuance of discipline, that the progression of discipline issued for repeated offenses is left up to the manager of the territory involved.<sup>9</sup> Hardin also testified that the issuance of discipline for a “no-call, no-show” is left to his discretion as manager.

Turner has issued three written warnings to Greathouse. Two of the warnings were issued after he consulted with Hardin.<sup>10</sup> The other warning, dated July 18, 2002, may also have been issued after consulting with Hardin.<sup>11</sup> The warnings dated July 18, and October 7, 2002, were issued to Greathouse because he left the job site without notice or permission to do so. This conduct constitutes a violation of the Employer’s policy and is conduct for which verbal and written disciplines are automatically issued.<sup>12</sup> At the time that the July and October disciplinary warnings were issued, Greathouse was not yet directly employed by the Employer. Rather, he was a contract employee provided by Executive Personnel Services. Notwithstanding this fact, Hardin testified that Turner consulted with him regarding issuance of at least two of three warnings and is unable to recall whether he was consulted regarding the third warning. . On November 27, 2003, a written warning was issued to Greathouse for failing to report to work. The discipline for such an infraction was determined by Hardin and issued after Turner reported the misconduct.

Hardin testified that Turner must consult with him if he wants to hire or fire an employee. Hardin testified that Turner must consult with him regarding terminations because Turner is not

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<sup>9</sup> Thus, Hardin is ultimately responsible for the discipline issued by the Employer in the Northeast territory.

<sup>10</sup> These two warnings are dated October 7, 2002 and November 27, 2003.

<sup>11</sup> Hardin could not recall whether or not he had been consulted concerning the July 18, 2002 discipline.

<sup>12</sup> Turner issued a written warning on July 18, 2002 to Greathouse because he failed to follow the Employer’s policy of notifying both the team leader and the territorial field manager that he had to leave work. In accordance with the Employer’s disciplinary policy, a warning was issued. Another warning was issued on October 7, 2002, when Greathouse engaged in the same conduct. In this instance, Hardin recalled that Turner consulted with him prior to issuing the warning.

## ANALYSIS

Based on the record as a whole, I find that the team leader, Timothy Turner, is not a supervisor within the meaning of Section 2(11) of the Act, and that he should be included in the unit.

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statutory indicia outlined in Section 2(11) are listed in the disjunctive. An employee is a supervisor if he or she possesses the authority to perform any one of these supervisory functions as long as the “exercise of such authority is not ... merely routine..., but requires the use of independent judgment” which is exercised in the interest of the employer. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). Supervisory status must be established by the party asserting that the employee is a supervisor. Id. at 712.

The record establishes that Turner does not use independent judgment to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or to reward other employees, or to direct them or to adjust their grievances or to effectively recommend such actions. Both Turner and Greathouse may recommend that an applicant be hired, however, the record establishes that Turner has never effectively recommended such action. Turner has never effectively recommended the termination of an employee. Turner does not assign any duties to Greathouse.

The Employer maintains in its post-hearing brief, that Turner has the authority to discipline, or effectively recommend the discipline, of employees. The record provided insufficient basis to conclude that Turner used independent judgment to discipline Greathouse.

Rather the discipline was of a routine nature as the warnings issued to Greathouse were for violating the Employer's clearly articulated policy regarding absences from work. The Board has found that when an employee is disciplined for misconduct that is an obvious violation of employer policy, such discipline does not establish the exercise of independent judgment. Phelps Community Medical Center, 295 NLRB 486, 489 (1989). In Phelps Community Medical Center, the Board found that the charge nurses' authority to clock out an aide that refused to obey an instruction regarding patient care did not confer supervisory status, as this authority was limited to clear violations of common working conditions. Id. Similarly, Turner issued the disciplinary warnings for clear violations of the Employer's established policy. The Employer's policy specifies that an employee is to receive a verbal or written discipline for leaving the job site. Concerning the warnings issued to Greathouse for leaving the job site, the record establishes that under the Employer's policy, such conduct automatically results in a warning. Thus, issuance of the discipline was merely a routine exercise of pre-existing Employer instructions.

As to the warning issued to Greathouse for failing to report for work, the record disclosed that the discipline issued to Greathouse was determined by Hardin. Moreover, at least two of the three warnings were issued to Greathouse only after Turner obtained Hardin's approval to issue the warnings. Moreover, Hardin testified that Turner is not privy to the Employer's contractual requirements regarding hiring and firing and thus, he must consult with Hardin before taking any such action. Accordingly, the record fails to establish that Turner exercises independent judgment in meting out discipline. Thus, I conclude that Timothy Turner is not a supervisor within the meaning of Section 2(11) of the Act and I shall include him in the unit found appropriate.

### **APPROPRIATE UNIT**

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Bus and tire service persons and work leaders employed at the Rochester Genesee Regional Transit Authority garage at 1372 East Main Street, Rochester, New York, excluding all guards and supervisors as defined in the Act.

There are approximately 2 employees in the bargaining unit found appropriate herein.

### ***DIRECTION OF ELECTION***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not



they desire to be represented for collective bargaining purposes by **AMALGAMATED TRANSIT UNION, LOCAL 282.**

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Acting Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York, 14202 on or before May 6, 2004. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by May 13, 2004.

**DATED** at Buffalo, New York this 29<sup>th</sup> day of April 2004.

**/s/ Helen E. Marsh**  
**HELEN E. MARSH,**  
Regional Director  
National Labor Relations Board – Region 3  
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